

U.S. Patent Application Serial No. 09/920,927

**REMARKS**

Upon entry of the above amendments, claims 1-9, 11-19, 62-69 and 71-79 will be pending. Applicants propose amendment of claims 1 and 3 and cancellation of claims 10 and 70.

Claim 70 was rejected under 35 USC §112, second paragraph, as being indefinite. Entry of the above proposed amendment canceling claim 70 will render this rejection moot. Accordingly, entry of the amendments after final rejection is earnestly solicited.

Claims 1-3, 5-13, 16, 17, 63-65 and 68-73 were rejected under 35 USC §103(a) as being unpatentable over Koh (U.S. Patent No. 5,364,813) and Hayashide. Favorable reconsideration of this rejection is earnestly solicited.

The Examiner acknowledges the deficiencies of Koh in the first paragraph on page 4 of the Office Action. The Examiner argues that Hayashide would have motivated one of ordinary skill in the art to modify Koh to provide the deficiencies "to improve productivity."

In addition to the deficiencies of Koh noted by the Examiner, the Examiner's attention is directed to the language of claims 1 and 3 which requires the lamination (of the first conductive film, first insulation film and third insulation film) to have a same pattern with a pair of side walls. Koh does not teach or suggest such a structure.

Applicants propose amendment of claims 1 and 3 to further clarify that the lamination has a same pattern which is defined by the pair of side walls. For example, see Fig. 15A illustrating an lamination of layers 19, 20, 47 and 21 or Fig. 16A illustrating a lamination of layers 32, 33, 49 and 34 having a same pattern defined with the side walls.

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In addition, Koh also fails to show an aperture formed through said interlevel insulating layer, at least partially exposing one of said fourth insulation films. The Examiner highlights apertures 38, 40 of Koh. However, although the aperture 40 of Koh exposes layer 18, this portion of layer 18 does not correspond to the fourth insulating film characterized by the Examiner as being that portion of 18 on the sidewalls of the gates. Claims 1 and 3 require a pair of fourth insulation films formed on the pair of side walls of lamination through said third insulation film. Koh fails to teach or suggest this structure, and Hayashide fails to provide the teachings which Koh lacks.

For at least the above reasons, the presently pending claims distinguish over the cited art, assuming that the references would have been combined. However, applicants respectfully submit that there is no basis for the Examiner's rationale that the combination would "improve productivity." There does not appear to be any basis that the modifications of Koh urged by the Examiner would "improve productivity."

Claims 4 and 62 were rejected under 35 USC §103(a) as being unpatentable over Koh and Hayashide further in view of Meguro et al., and claims 14, 15, 18, 19, 66, 67 and 74-79 were rejected under 35 USC §103(a) as being unpatentable over Koh and Hayashide further in view of Lee et al. These rejections are respectfully traversed.

As noted above, there is no basis for combining the teachings of Koh and Hayashide to "improve productivity."

In addition, in regard to Meguro et al., the Examiner asserts that it would have been obvious to provide an insulation film 6 under the bottom of a second insulating film. However, obviousness only requires a reasonable expectation of success. There does not appear to be a reasonable

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expectation of success to make the modifications of Koh asserted by the Examiner based on the teachings of Meguro et al.

In regard to Lee et al., the Examiner merely argues that since it is common to have a capacitor, it would have been obvious to have a DRAM with a capacitor as claimed in the device of Koh.


For at least the foregoing reasons, the claimed invention distinguishes over the cited art and defines patentable subject matter. Favorable reconsideration is earnestly solicited.

Should the Examiner deem that any further action by Applicants would be desirable to place the application in condition for allowance, the Examiner is encouraged to telephone Applicants' undersigned attorney.

In the event that this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

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Enclosures: Petition for Extension of Time

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CARD NO: 03636

U.S. Patent Application      Docket No: 970607A  
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Applicant(s): IKEMASU, et al.

Papers filed herewith on: 07/23/03

Fees: \$ 110.00

Req. for Ext. of Time

Other: Amendment After Final Rejection



COMMISSIONER OF PATENTS

Receipt is hereby acknowledged of the papers filed as indicated  
in connection with the above identified case.

SGA/ARF